

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5044 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL MOTORS LTD

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioners
MR PB MAJMUDAR for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH
Date of decision: 28/07/1999

ORAL JUDGEMENT

Draft amendment granted.

Rule. Mr. P.B.Majmudar appears and waive service of

Rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed by the petitioner for an appropriate writ, order or direction in terms of para 24 which reads as under :

"24. A. Your Lordships be pleased to issue a writ of mandamus or the writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the action of the respondents of appropriating the amounts refundable to the petitioner as per Annexure D hereto, towards the demand confirmed vide order dated 22.2.1999 at Annexure A hereto and be further pleased to direct the respondents to refund the aforesaid amount to the petitioner along with the interest u/s 11BB of the Act till the date of payment.

B. Your Lordship be pleased to issue a writ of mandamus or the writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to forebear from enforcing the recovery of the demand confirmed vide order dated 22.2,.1999 at Annexure A hereto inter alia by adjusting the amounts of refund falling due to the petitioner on adjudication of its refund claims at Annexure F hereto till the appeal/ stay application against the said order is heard and decided by the second respondent.

C. Pending admission, hearing and final disposal of the petition, Your Lordships be pleased to restrain the respondents from enforcing the recovery of the demand confirmed vide order dated 22.2.1999 at Annexure A hereto inter alia by adjusting the amounts of refund falling due to the petitioner on adjudication of its refund claims at Annexure F hereto till the appeal/ stay application against the said order is heard and decided by the second respondent.

D. Exparte ad interim relief in terms of prayer C above be granted.

E. Such other and further reliefs as may be deemed just and proper in the facts and circumstances of the present case may kindly be

granted."

Notice was issued by us on July 16, 1999 and ad-interim relief in terms of para 24 C was granted.

Today, when the matter was called out for final hearing, Mr. Joshi for the petitioner stated that without prejudice to the rights of the petitioner to take appropriate proceedings for relief in terms of para 24 A, the petitioner does not press that relief in the present petition. So far as prayer in terms of para 24 C is concerned, it relates to interim relief and ad-interim relief was granted by us. Hence, grant of relief in terms of para 24 B remains.

Mr. Majmudar , on behalf of the Union of India states that the department has no objection if relief in terms of para 24 B is granted in view of the fact that the appeal filed by the petitioner is pending before the Appellate Authority and if Appellate Authority is directed to reconsider the matter and to pass appropriate order on application for stay filed by the petitioner in the light of the points which will be argued before the Appellate Authority. Till then, no coercive proceedings including appropriation of refund falling due to the petitioner, would be taken against the petitioner.

In our opinion, the stand taken by Mr. Majmudar is reasonable. The petition deserves to be partly allowed and we accordingly partly allow it. So far as relief in terms of para 24 A is concerned, as it is not pressed, we express no opinion and it is open to the petitioner to take appropriate proceedings in accordance with law.

So far as prayer in terms of para 24 B is concerned, the department will not take coercive recovery including appropriation of refund falling due to the petitioner till application for stay is decided by the Appellate Tribunal in accordance with law. Such application will be decided by the Appellate Tribunal as expeditiously as possible, preferably within six weeks from today . Petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

parekh